IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1373 of 2007

Gnanambal .. Petitioner

Vs

1.The State of Tamil Nadu,
rep. by Secretary to Govt.,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai.

2.The Commissioner of Police,
Greater Chennai, Egmore, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.T.P.Sekar

For Respondents : Mr.N.R.Elango,
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, mother of the detenu by name P.Moorthy, has filed this Habeas Corpus Petition challenging the detention order dated 13.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), branding the detenu as a 'Goonda', to call for the records in connection with the order of detention passed in proceedings No.315 of 2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

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2. The ground case, which led to the passing of the detention order, came to be registered in S.5 Pallavaram Police Station Crime No.306 of 2007 for offences under Sections 341, 392, 397, 336 and 506(2) IPC. on the basis of the complaint given by one Palani. According to the complainant, on 1.6.2007 at about 8.30 hours, when he was proceeding near Thennanthoppu Colony, the detenu along with his associates wrongfully restrained and at the point of knife, threatened him to handover the money. Fearing danger to his life, the complainant raised hue and cry, on hearing which, the public came for his rescue, but the detenu and his associates pelted stones on them and taking away Rs.125/- and the wrist watch from the complainant, the detenu and his associates brandished their knives and created panic at the spot, resulting in the traffic dislocation and taking advantage of the panic situation, they escaped from the spot. On the basis of the crime registered, the detenu was arrested during the course of investigation and produced before Judicial Magistrate, Tambaram, who remanded him to judicial custody.

3.The second respondent, taking note of the above ground case and finding that there is an adverse case on the file of same police station in Crime No.295 of 2007 under Man Missing @ Section 302 IPC., having satisfied himself that there is compelling necessity to detain the detenu in order to prevent him from indulging in such activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a 'Goonda'.

4.Since the learned counsel for the petitioner assailed the order of detention mainly on the ground of delay on the part of the detaining authority in serving the rejection letter on the detenu, we do not propose to go into other aspects, as the said ground has to succeed.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2.Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

5.3.The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

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5.4.Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5.It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6.1.Coming to the case on hand, admittedly, objecting to the order of detention, a representation was made on behalf of the detenu on 24.8.2007, which was received by the Government on 28.8.2007. Remarks were called for from the detaining authority on 29.8.2007. On receipt of the remarks on 6.9.2007, the file was submitted and on 8.9.2007 the Under Secretary considered the same and on 10.9.2007, the Additional Secretary and the Minister concerned dealt with the file and the Minister rejected the representation on the same day. However, the rejection letter was prepared only on 14.9.2007, after a delay of four days, which is not properly explained and hence, inexcusable. Thereafter, it was sent to the detenu on 17.9.2007 and served on him on 19.9.2007.

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7.At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:-

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8.That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9.In the instant case, there is delay of four days in preparing the rejection letter, as referred to above, which rendered the detention illegal. Hence, we are inclined to allow this petition.

10.In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Secretary to Government
   of Tamil Nadu, Prohibition and
   Excise Department, Fort St. George,
   Chennai 600 009.

2. The Commissioner of Police,
   Greater Chennai, Egmore, Chennai.

3. The Superintendent
   Central Prison, Puzhal, Chennai.

4. The Joint Secretary to Government
Public (Law and order) Department
Fort St. George, Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

1 cc to Mr.T.P. Sekar, Advocate, sr. 72031

H.C.P.No.1373 of 2007

RS (CO)
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